

(1919) 03 CAL CK 0009
In the Calcutta High Court

Bidhu Sekhar Banerjee

APPELLANT

Vs

Kuloda Prasad Deogharia and Others

RESPONDENT

Date of Decision : 05-03-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 7 Rule 9(2), 47

Citation : 50 Ind. Cas. 525

Hon'ble Judges : Edward Fletcher, J;Cuming, J

Bench : Division Bench

Judgement

Edward Fletcher, J.—This an appeal preferred by the plaintiff against the decision of the learned Officiating Subordinate Judge of Burdwan, dated the 19th September 1917. The suit was brought by the plaintiff to set aside an order allowing a claim preferred under Order XXI, Rule 58, Code of Civil Procedure. The plaintiff was a decree-holder who had obtained decree on the 21st November 1911. That decree was upheld on appeal, and, after that, execution proceedings were instituted and the property of the judgment-debtor was attached. Then the present defendant, who was the judgment debtor, put in a claim on behalf of a Hindu deity of the name of Kalyaneswari Devi alleging that the property that had been attached was not his but was the property of the goddess. On the 20th March 1915 the proceedings in the claim case terminated, the Judge upholding the claim of the deity which had been preferred and only preferred by the judgment debtor as her Sbebait. On the 6th March 1916 the plaintiff instituted the present suit against the present defendant. It seems to be abundantly clear on the plaint that this plaint was filed against the present defendant because as the Sbebait of the goddess he preferred a claim and succeeded in obtaining an order upholding the claim of the goddess. That seems to me to be obviously so, because any proceedings as between the plaintiff who was the decree holder and the defendant in his present capacity as judgment-debtor would be barred under the provisions of Section 47, Civil Procedure Code, and I think both from the allegations in the plaint and from all the circumstances that the plaintiff instituted those proceedings against the defendant as representing this Hindu

deity. The learned Judge of the Court below on the merits was wholly in favour of the plaintiff. But the plaintiff's suit failed for this reason. The learned Judge held that the idol was a necessary party to the suit and, as the application to add the idol as a party was made after the expiration of one year from the disposal of the claim case, therefore, the suit as against the idol was barred by limitation. In my opinion the authorities show quite clearly that the idol is not a necessary party to such a suit. The right to sue is vested in the Shebait, and if the right to sue is Tested in the Shebait, it is not necessary that the idol should be there as a party. The suit can be properly maintained in the name of the Shebait. If authority is wanted for this proposition, the decision of the Privy Council in Jagadindra Nath Roy v. Hemanta Kumari Debi 32 C. 129 (P.C.) : 31 I.A. 203 : 8 C.W.N. 809 : 6 Bom. L.R. 765 : 1 A.L.J. 585 : 8 Sar. P.C.J. 698. may be cited.

2. The next point was that, as the defendant was sued in a representative capacity, the plaint was defective and that the defect would not be cured without the addition to the name of the defendant the fact that he was being sued on behalf of the idol. Order VII, Rule 9, Sub-rule (2), Civil Procedure Code, states that where the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the plaint shall containsuch statement as will show in what capacity the plaintiff or the defendant sues or is sued. The decisions of this Court are quite clear on this point. It is not necessary to state in the cause-title of the plaint the representative capacity in which the plaintiff or the defendant sues or is sued, although no doubt that is a convenient place to make such a statement. In support of that, I may refer to the decision in Kuarmani Singha v. Wasif Ali Murza 28 Ind. Cas. 818 : 9 C.W.N. 1193, and also to the decision reported as Dinabandhu Nandi v. Chamiraddi Miji. 34 Ind. Cas. 548. If it is not necessary to state that in the cause title, it seems to me quite dear in this case that the plaint does show that the defendant was being sued as the Shebait of the idol. In any case, the defendant being before the Court, the failure to make such a statement would not be a defect of party but would merely be a matter which the Court might amend by adding a statement to the plaint that the defendant was being sued in this particular capacity. It would not be adding a new party, it would be merely rectifying a simple omission to state that the defendant was being sued as the Shebait of the deity. That it would be a mere omission is sufficiently shown by a Full Bench decision of the Allahabad High Court in the case of Jodhi Rai v. Basdeo Parshad 11 Ind. Cas. 47 : 33 A. 735 : 8 A.L.J.

3. Then it was said that the suit was defective for want of other parties, that is, that the defendant had co-Shebaites who